IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/03/2003

CORAM

THE HONOURABLE MR.JUSTICE R.JAYASIMHA BABU
and
THE HONOURABLE MR.JUSTICE N.V.BALASUBRAMANIAN

L.P.A.No.172 of 2000

1. Vanajakshi ammal
2. Gajendra Naidu. ... Appellants.

-Vs-

Raniammal. ... Respondent.

L.P.A. filed against the judgment and decree dated 5.9.2000 in A.S.No.246 of 1987 on the file of this Court reversing the judgment and decree dated 31.7.1986 in O.S.No.55 of 1985 on the file of Sub Court, Poonamallee.

!For appellants :: Mr.S.Balasubramanian

^For respondent :: Mrs. Hema Sampath for
Mrs.Beula Rajakumari.

:JUDGMENT

N.V.BALASUBRAMANIAN,J.

Defendants in the suit are the appellants and the plaintiff is the respondent herein. She instituted the suit for cancellation and to set aside the document dated 27.7.1977 or in the alternative, for declaration that the document should be treated as a simple mortgage and not a sale deed, for a

direction to the defendants to deliver possession of the suit property in case the plaintiff is not found to be in possession of the suit property and for injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

2. A reading of the prayers in the plaint clearly shows that many reliefs, which are alternative or contradictory to each other, are claimed by the plaintiff in the suit and the case of the plaintiff is that she is the owner of the suit property measuring 1.70 acres in Survey No.287, Chokkanallur village and she has sunk a well at the cost of Rs.10,000/- by raising loans. She has stated that she also obtained mortgage loan from Land Development Bank and other sources and installed an oil engine. She has stated that she replaced the oil engine with an electric motor at the cost of Rs.5,000/- and she also constructed a shed to locate the motor pump set. She has stated that she raised a coconut garden and she spent a sum of Rs.15,000/- for sinking a well, installing the motor pump set and constructing the shed. It is stated that she raised a loan from Poonamallee Co-operative Bank to the extent of Rs.7,000/- in 1975 and she also raised manure loan from Kolapancheri Co-operative Society. She has stated that she borrowed loans from one Gajendra Naidu and also from other relatives for improving the land. It is stated that she required some money for raising crops and the said Gajendra Naidu pressed for repayment of his loan and therefore she was forced to raise a loan by mortgaging her property. It is stated that the well has copious supply of water which is more than what is required for irrigating her 1.70 acres of land and also the poramboke land under the occupation of the plaintiff and her husband. She has stated that the second defendant offered to advance money to discharge the loans obtained by the plaintiff and she bona fide believed and agreed to mortgage the suit property for a loan of Rs.20,000/- and executed a document on 27.7.1977. According to her, the document was brought out by the second defendant with the active assistance of Ramamoorthy, Viswanathan Velu and Balaraman and the plaintiff was not aware of the contents of the document as the document was not read over to her and she bona fide believed that the document to be a mortgage deed. She has stated that she is an illiterate lady and her husband was addicted to drinks. She has stated that taking advantage of the weakness of the plaintiff's husband and other circumstances, the second defendant played a fraud upon the plaintiff to execute the document representing the same to be a mortgage deed and tempted the plaintiff's husband to attest the document without informing the contents of the document though it was a sale deed for the sale of suit property. She has stated that some other documents were also brought out and the first defendant was not present at the time of execution of document or at the time of registration. It is stated that money was not paid to the plaintiff, but it was represented by the second defendant that he would discharge the debts of the plaintiff. It is her case that by way of fraud, misrepresentation and undue influence, the sale deed for the sale of suit property was obtained by the defendants. Her case is that she is in possession of the suit property. Hence, the suit is filed for the reliefs as stated earlier.

3. The defendants in their written statement have denied all the averments made in the plaint. Their case is that the plaintiff sold the suit property for consideration and the loans covered in the deed were discharged. It is stated that the first defendant paid a sum of Rs.15,026/-

in cash to the plaintiff at the time of execution of the deed and a sum of Rs.10,000/- was paid for the right to cultivate 30 cents of poramboke land and the plaintiff deposited the moneys in bank and the first defendant was put in possession of the property. The case of the defendants is that the sale is a true, valid and bona fide one and supported by consideration and the sale deed was read over to the plaintiff and her husband attested the sale deed before the Sub Registrar of Assurances. The defendants have denied that fraud has been committed on the plaintiff and her husband. The case of the defendants is that the plaintiff and her husband were fully aware of the nature of transaction in question and the plaintiff executed the deed of sale with full knowledge.

4. Learned trial Judge held that the sale deed is a valid document and there is no evidence of undue influence, coercion or misrepresentation. He also found that the first defendant is in possession of the property and the plaintiff is not entitled to the reliefs prayed for and in this view of the matter, he dismissed the suit. Aggrieved by the judgment and decree, the plaintiff filed an appeal before this Court and a learned Single Judge held that there were certain insertions in the sale deed which were not found in the copy maintained in the Office of Sub-Registrar and such an alteration would amount to material alteration in the deed. Learned Judge held that the alteration was made without the consent of the parties and it must have been done after the deed was registered and the deed would not bind the plaintiff and the same is liable to be cancelled. Learned Judge was of the view that the plaintiff is an illiterate lady and she was not aware of the nature of transaction and a fraud was played on her by the defendants when the document was executed and she had signed the document without knowing the character and contents of the same. Learned Judge therefore held that the defendants have not discharged the burden of proof cast upon them to prove that the deed of sale is a valid one. He also held that since and the defendants were in dominating position over the plaintiff, the defendants have obtained the sale deed making it appear as if it is a mortgage deed taking advantage of the position of the plaintiff. In this view of the matter, the learned Single Judge held that the deed is liable to be set aside and allowed the appeal preferred by the plaintiff. It is against the judgment and decree, the present appeal has been preferred.

5. Heard Mr.S.Balasubramanian, learned counsel appearing for the appellants and Mrs. Hema Sampath, learned counsel appearing for the respondent. The first question that arises for consideration in this appeal is whether there is any material alteration in the deed dated 27 .7.1977 (Ex.B-1) and the learned Single Judge was correct in holding that Ex.B-1 document does not bind the plaintiff and the same is liable to be cancelled on the ground of material alteration in the deed.

6. The alteration is found in page 7 of the said document before the description of property and the sentence which is held to have been inserted in the said document reads as under:-

@,e;j fpiua gj;jpuj;jpw;F rhT&pahf vd; fztu; N.Jiu ifvGj;J bra;jpUf;fpwhu;@

The English translation of the same reads thus:-

" My husband N.Durai has signed as a witness to this sale deed".
Learned Single Judge, on the comparison of the original deed and the entries found in the register relating to the said document maintained in the Office of Sub-Registrar of Assurances, Poonamallee, held that the sentence quoted above was not found in the copy of the document presented along with the document for registration, and after the registration of the document the sentence quoted above should have been inserted at the end of the document before the description of property. Learned Judge also held that the said alteration in the deed would amount to material alteration.

7. We are of the view that the learned Judge before deciding the question whether there is any material alteration in the document should have framed an issue and called for a finding from the trial Court on the question whether there was an insertion in the document before recording his finding that it would amount to material alteration in the deed. The framing of an additional issue is all the more necessary, because the plaintiff has not pleaded in the plaint that there was any material alteration in the deed of sale. The trial Court has framed only five issues for consideration and the issue regarding alteration in the deed was not one of the issues framed by the trial Court. The parties have not let in any evidence on this aspect of the matter.

8. Further, the plaintiff has produced the registration copy of the deed which was marked as Ex.A-17 and the original document was marked as Ex.B-1 through the plaintiff when she was cross-examined as P.W.1 on 17.7.1984 when the suit was on the file of Subordinate Judge, Chengalpattu before it was transferred to the file of Subordinate Judge, Poonamallee. The plaintiff has also not taken any steps to amend the plaint after the document was produced in the Court raising a plea regarding the material alteration in the deed. The trial Court also has not considered the issue. We are of the view that the defendants should not have been taken by surprise at the first appeal stage on the question whether there is any material alteration in the deed, when they had no opportunity to explain and lead evidence on that aspect. We are of the view that if the learned Judge had felt that there was any alteration in the deed and it would amount to material alteration, he should have called for a finding from the trial Court on the said question after framing a necessary issue. However, we are not inclined to set aside the judgment of the learned Single Judge on the score that the defendants were not given opportunity to lead evidence on this aspect.

9. There is no dispute that the following words occur in Ex.B-1 at the end of the document, before the description of property, @,e;j fpiua gj;jpuj;jpw;F rhT&pahf vd; fztu; N.Jiu ifvGj;J bra;jpUf;fpwhu;@/ We proceed on the basis that the insertion was made subsequent to the registration of the document. Though learned counsel for the appellants submitted that the insertion was made even at the time of registration of the document and due to oversight, it was not incorporated in the copy of the document and the insertion in the deed was made on the advice of the Sub-Registrar at the time of registration of the document, however, in the absence of any evidence, we proceed on the basis that the insertion of the words was made after the registration of the document. The question still remains whether the insertion would amount to material alteration in the

document in question.
10. The question what is meant by material alteration in a deed was the subject matter of consideration in several decisions, and the Privy Council in the case of NATHU LAL v. GOMTI KUAR (AIR 1940 Privy Council 160) held as to what is meant by material alteration in the deed as under:-
" If an alteration (by erasure, interlineation or otherwise) is made in a material part of a deed after its execution, by or with the consent of any party thereto or person entitled thereunder, but without the consent of the party or parties liable thereunder, the deed is thereby made void. the avoidance however is not ab initio or so as to nullify any conveyancing effect which the deed has already had; but only operates as from the time of such alteration and so as to prevent the person who has made or authorised the alteration and those claiming under him, from putting the deed in suit to enforce, against any party bound thereby who did not consent to the alteration, any obligation, covenant or promise thereby undertaken or made. A material alteration is one which varies the rights, liabilities, or legal position of the parties ascertained by the deed in its original state or otherwise varies the legal effect of the instrument as originally expressed, or reduces to certainty some provision which was originally unascertained and as such void, or may otherwise prejudice the party bound by the deed as originally executed.
The effect of making such an alteration without the consent of the party bound is exactly the same as that of cancelling the deed. The avoidance of the deed is not retrospective and does not revest or reconvey any estate or interest in property which passed under it. and the deed may be put in evidence to prove that such estate or interest so passed or for any other purpose than to maintain an action to enforce some agreement therein contained."
The same view was reiterated by this Court in S.K.PANCHAKSHARAM v. T.V.KANNIAH (AIR 1986 Madras 156).
11. The Supreme Court in RAM KHILONA & ORS v. SARDAR & ORS. (2003 -1- L.W. 127) quoted with approval the following passage from Halsbury's Laws of England:-
" A material alteration is one which varies the rights, liabilities, or legal position of the parties as ascertained by the deed in its original state or otherwise varies the legal effect of the instrument as originally expressed, or reduced to certainty some provision which was originally unascertained and as such void, or which may otherwise prejudice the party bound by the deed as originally executed.
The effect of making such an alteration without the consent of the party bound is exactly the same as that of cancelling the deed."
The Supreme Court in Ram Khilona's case also held that the alteration would not be material which does not vary the legal effect of the deed in its original state, but merely expresses that which was implied by law in the deed as originally written or which carries out the intention of the parties already apparent on the face of the deed, provided that the alteration does not otherwise prejudice the party liable under it.

12. Bearing in mind the principles of law laid down by the Privy Council as well as the Supreme Court and this Court, the question that

arises is whether the insertion would amount to material alteration in the deed. The plaintiff in the plaint has stated that her husband attested the document and therefore the fact of attestation is not a new fact that is sought to be introduced in the deed. We have also gone through the deed in question and the plai ntiff's husband is an attesting witness to the deed. It is seen from the endorsement of the Sub-Registrar in the deed that both the plaintiff and her husband have presented the document in question before the Sub-Registrar and admitted the execution of the deed. Therefore the insertion that has been made that her husband has signed the deed as an attestor is not a new fact, but it affirms the fact what is already found in the deed itself as the plaintiff's husband has signed the deed as an attestor. He has admitted before the Sub-Registrar as to the factum of execution of the document. In other words, no new fact has been introduced by the insertion in the document and hence, it is not a case where, by the insertion of the words, it has prejudiced the rights of the parties. It is also not a case where, by the alteration, the rights, liabilities and legal position of the parties are varied or altered, nor is it a case where the legal effect of the instrument in question is altered. It is also not a case where something contrary has been introduced to the statement which was originally found.

13. Learned counsel for the respondent submitted that by the insertion of the sentence, the plaintiff's right has been prejudiced as it is stated that the plaintiff's husband was a attesting witness. We have already held that the addition of the particular sentence that the plaintiff's husband is a attesting witness is not a new fact as it is clear from the deed that the

plaintiff's husband was an attesting witness which was also pleaded by the plaintiff in her plaint and he has also admitted the document before the Sub-Registrar.

14. Learned counsel submitted that by introduction of the particular sentence, the plaintiff's husband is shown as an attestor and the sentence has been introduced to show that the husband of the plaintiff has consented to whatever has been stated in the deed. She relied upon the decisions of this Court in RAMASWAMY GOUNDER v. ANANTHAPADMANABHA IYER (84 L.W.176) and JAGANNATHAM PILLAI v. KUNJITHAPATHAM PILLAI (85 L.W. 112). However, in K.A.SELVA NACHI AND ANOTEHR v. Dr.S.R.SEKAR AND ANOTHER (2003 (1) TLNJ 173), we have taken the view as under:-

"Those observations made by the learned judges cannot be treated as having laid down a proposition of law that all attestors of all documents must be imputed with knowledge of the contents thereof and even when such contents are adverse to the interest of the attestors so that the attestors are estopped from questioning the same solely by reason of the fact of their having attested the document. Observations based on personal perceptions and experience of individual Judges cannot be elevated to the status of Rules of law, when custom and usage is always a matter of evidence and strict proof Those observations are also clearly inconsistent with the law that had been laid down by the Privy Council in the case of Pandurang Krishnaji and cannot be regarded as having laid down the law correctly. Moreover, whatever may have been the practice in the years 1912 o r 1924, the same cannot be regarded

as the practice even eighty years later, when the awareness of the requirements of law is far greater than what it was eighty years ago. Further, on principle it is not possible to hold that attestation of a signature is to be deemed as acceptance of the contents of the document which has been executed by the signatory whose signature is attested by the attestor. There should be something more than mere attestation to impute such knowledge of the contents so as to bind the attestors."

15. Moreover, the decisions relied upon by the learned counsel for the respondent are to the effect that if the attestor has attested the document with the knowledge of the contents of the document, it must be presumed that he has consented for the transfer of interest whatever he had in the property and it is not open to him later on to question the document in question. It is not a case where the plaintiff's husband is questioning the deed of sale, but a case where the executant of the document is questioning the deed. Her case is that her husband, though attested the document in question, was not in full sense and was a drunkard when he attested the document. The plaintiff, on the other hand, has not proved the state of drunkenness of her husband on the date of registration. On the other hand, the endorsement of the Sub-Registrar shows that the plaintiff's husband was not in the state of drunkenness when the document was presented for registration. Therefore, the cases relied upon for the proposition that it is not open to the attestor to question the document when he has attested the document with the knowledge of its contents have no application as it is not a case of an attestor questioning the document, but the executant of the document questioning the document. Further, we have already held that there is no material alteration in the document by insertion of the particular sentence. We therefore hold that learned Single Judge was not correct in holding that there was a material alteration in the document in question and therefore the deed does not bind the plaintiff.

16. Learned counsel for the respondent next submitted that the plaintiff is an illiterate lady and her husband was in the state of drunkenness at the time of registration and taking advantage of the situation in which the plaintiff was placed, the defendants had obtained the signature of the plaintiff making her believe that it was a deed of mortgage and the burden is on the defendants to prove that no fraud was played on her and to prove that there was no misrepresentation. Learned counsel also submitted that the other persons who attested the document belong to the same caste of the defendants and the plaintiff belongs to another caste. Learned counsel strongly relied upon the decision of a Division Bench of this Court in CHIDAMBARAM PILLAI & OTHERS v. MUTHAMMAL & ANOTHER (1993-1-L.W. 466) wherein this Court held as under:-

" A section of womenfolk in view of the social conditions of the times are presumed to have imperfect knowledge of the world, as the Supreme Court has said in the case of Mst.Kharbuja Kher AIR 1963 SC 1203. they are presumed to have imperfect knowledge of the world, as, by the pardah system, they are practically excluded from social system, they are practically excluded from social intercourse and communion with the outside world. The origin is traced

to the Indian social usages and the general rules of English law which protect persons whose disability/disabilities make them dependent upon or subject them to the influence of others, even though nothing in the nature of deception or coercion may have occurred, applicable to such section of women. In the words of Lords Sumner, which have been quoted with approval by the Supreme Court in the case of Mst.Kharbuja Kher, "This is part of the law relating to personal capacity to make binding transfers or settlements of property of any kind." It is due to the imperfection of the knowledge of the world that the law throws round such women a special cloak of protection which demands that the burden of proof shall in such a case rest, not with those who attack, but with those who found upon the deed, and the proof must go so far as to show affirmatively and conclusively that the deed was not executed by, but was explained to, and was really understood by the grantor. In such case, it must also, of course, be established that the deed was not signed under duress, but arose from the free and independent will of the grantor."

17. Learned counsel also relied upon the decisions in THIRUMALAI VADIVU AMMAL AND OTHERS v. MUTHAMMAL AND ANOTHER (1999-2-L.W.459) and MINOR PALANIVELU v. SADASIVA PADAYACHI (DIED) (2000(II) CTC 486). These decisions are not helpful as it cannot be stated that the plaintiff, by her own showing, is not a person not well-versed in the world affairs. She has stated in the plaint that she purchased the land by a registered sale deed dated 1.1.1974. She has also admitted that she sunk a well at the cost of Rs.10,000/- and she raised loans for digging the well from the Land Development Bank and she obtained loans from private parties also. She has also admitted that she installed an Oil engine and constructed a shed. She has stated that she raised a coconut garden. Apart from that, her own evidence discloses that at the time of registration of the document in question, the SubRegistrar has asked her whether she executed the deed of sale and she affirmed the same which clearly shows that at the time of registration of the document in question the plaintiff knew very well that it is a deed of sale. Further, she has admitted that she received the sale consideration and discharged the loan to the second defendant on the date of sale. She has also stated that she discharged the loan to one Andalammal on the same day. Moreover, all the attestors to the document do not belong to the caste of the defendants and one of the attestors belongs to the same caste of the plaintiff. There is also evidence to show that the plaintiff's husband was not in the state of drunkenness on the date of execution of the sale deed. The averment in the plaint as well as her evidence clearly show that she is not a lady who has imperfect knowledge of the world. As already stated, it is clear from her admission that she had full understanding power and she had purchased the property and improved the same by raising loans and she also discharged the loans. In such circumstances, we are unable to accept the submission of the learned counsel for the respondent that she had no knowledge of the nature of the document in question and she was misled by the defendants and her husband who attested the document in question and a fraud was committed on her.

18. As a matter of fact, the trial Judge found that the

plaintiff's husband was present in the Court throughout the proceedings and probably, at the instance of the plaintiff's husband, the suit had been instituted. We are of the view, on the evidence on record, the principles laid down by the Division Bench of this Court in Chidambaram Pillai's case (1993-1-L.W.466) and other decisions in Thirumalai Vadivu ammal's case (1999-2-L.W.459) and Minor Palanivelu's case (2000(II) CTC 486) are not applicable. We hold that there is no evidence at all for the learned Single Judge to hold that the defendants are having lands in the same village and they are influential people, having large following. It is also relevant to notice that the case of the plaintiff is that the second defendant has played fraud on the plaintiff to execute the document and tempted her husband to attest the document without informing the contents of the document. There is no plea of any undue influence exercised by the defendants over the plaintiff, nor is there any evidence to that effect. Accordingly, we hold that the learned Single Judge was not correct in holding that the defendants were in dominating position and taking advantage of the plaintiff's position, the defendants obtained from the plaintiff the deed in question without explaining the nature of the deed. We find that there is no evidence for such a conclusion to be arrived at by the learned Single Judge. Accordingly, we are unable to sustain the reasonings and the conclusion of the learned Single Judge. Consequently, we set aside the judgment of the learned Single Judge and the Letters Patent Appeal stands allowed. However, in the circumstances, there will be no order as to costs.

Index: Yes
Website: Yes
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To

1. The Subordinate Judge, Poonamallee
2. The Section Officer, V.R.Section,
High Court, Madras.

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